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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,998	03/24/2004	Loren Venegas	IDS-16002/14	4665
25006	7590	01/30/2007	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C.			PICKETT, JOHN G	
PO BOX 7021			ART UNIT	PAPER NUMBER
TROY, MI 48007-7021			3728	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/30/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/807,998	VENEGAS, LOREN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gregory Pickett	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 October 2006.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action acknowledges the applicant's amendment filed 25 October 2006.

It is noted that the amendment of 25 October 2006 is not in compliance with 37 CFR 1.121 in that claims 5-9 are not listed. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application (see 37 CFR 1.121(c)).

However, in the remarks section of the response, applicant clearly states that claims 5-9 have been canceled (see first sentence). To advance prosecution of the application, the status of claims 5-9 is presumed as (canceled). Claims 1-4 are pending in the application.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

3. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "or other accessories" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or other

accessories "), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cleveland (US 4,531,635; previously provided).

Cleveland discloses a molded plastic vessel **10** disguised to look like a rock (see Figure 1) with a base **16** and a lid **36** enabling the user to store items as claimed.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Arthur (US 6,087,582; previously provided).

Arthur discloses a molded plastic vessel **10** disguised to look like a rock (see Column 2, lines 45-47 and Figures 1-3) with a base **14** and a lid **17** enabling the user to store items as claimed.

***Claim Rejections - 35 USC § 103***

6. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abel (US 5,011,034) in view of Cleveland.

Abel discloses a molded plastic vessel **11/12** disguised to look like a landscape feature with a base portion **11**, a lid portion **12**, and a garden hose **20**. Abel merely lacks the express disclosure of the vessel disguised to look like a rock.

Cleveland discloses that it was known in the art to provide storage vessels disguised to look like rocks. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the vessel disguised to look like a rock in order to present the vessel in a rock garden. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

7. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weimer (US 2003/0168371 A1) in view of Cleveland.

Weimer discloses a molded plastic vessel **10** with an aesthetically altered exterior and having a base portion **12**, a lid portion **14 & 14a**, and insulated walls. Weimer merely lacks the express disclosure of the vessel disguised to look like a rock.

Cleveland discloses that it was known in the art to provide storage vessels disguised to look like rocks. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the vessel disguised to look like a rock in order to market the vessel to users such as rock climbers. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

8. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jauregui (US 6,663,458) in view of Cleveland.

Jauregui discloses a molded plastic vessel **10** disguised to look like something other than a container with a base portion **12**, a lid portion **20**, and swimming pool accessories (see for example, Col. 5, lines 36-39). Jauregui merely lacks the express disclosure of the vessel disguised to look like a rock.

Cleveland discloses that it was known in the art to provide storage vessels disguised to look like rocks. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the vessel disguised to look like a rock in order to present the vessel in a cartoon-like setting (i.e. Bedrock from the Flintstones). A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

#### ***Response to Arguments***

9. Applicant's arguments filed 25 October 2006 have been fully considered but they are not persuasive. Arthur clearly anticipates a vessel **10** disguised to look like a rock (see Column 2, lines 45-47 and Figures 1-3) and comprising a base portion **14** and lid **70**.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Greg Pickett  
Examiner  
9 January 2007

  
ANTHONY D. STASHICK  
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